

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

SEAN E. BRYANT,

Respondent.

)
)
)
)
)

Supreme Court #SC95686

INFORMANT'S BRIEF

**OFFICE OF
CHIEF DISCIPLINARY COUNSEL**

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240
Alan.Pratzel@courts.mo.gov

INFORMANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF JURISDICTION	3
STATEMENT OF FACTS	4
PROCEDURAL HISTORY	4
WILLIAMS REPRESENTATION AND TRUST ACCOUNT OVERDRAFT	5
RESPONDENT'S DHP TESTIMONY	9
DISCIPLINARY HEARING PANEL DECISION	10
POINT RELIED ON	
I.	12
II.	13
ARGUMENT	
I.	14
II.	17
CONCLUSION	25
CERTIFICATE OF SERVICE	26
CERTIFICATION: RULE 84.06(C)	26

TABLE OF AUTHORITIES

CASES

<i>In re Belz</i> , 258 S.W.3d 38 (Mo. banc 2008)	19, 20
<i>In re Farris</i> , 472 S.W.3d 549 (Mo banc 2015)	13, 20
<i>In re Frick</i> , 694 S.W.2d 473, 480 (Mo. banc 1985).....	19
<i>In re Griffey</i> , 873 S.W.2d 600 (Mo. banc 1994)	18, 21
<i>In re Kazanas</i> , 96 S.W.3d 803 (Mo. banc 2003).....	13, 17, 19
<i>In re Maier</i> , 664 S.W.2d 1 (Mo. banc 1984).....	18
<i>In re Mendell</i> , 693 S.W.2d 76 (Mo. banc 1985)	13, 18
<i>In re Mentrup</i> , 665 S.W.2d 324 (Mo. banc 1984).....	18
<i>In re Oberhellman</i> , 873 S.W.2d 851, 852 (Mo. banc 1994)	24
<i>In re Oliver</i> , 285 S.W.2d 648 (Mo. banc 1956)	12, 14
<i>In re Snyder</i> , 35 S.W.3d 380 (Mo. banc 2000)	24
<i>In re Witte</i> , 615 S.W.2d 421 (Mo. banc 1981).....	18

OTHER AUTHORITIES

ABA <u>Standards for Imposing Lawyer Sanctions</u> (1991 ed.)	13, 14, 18, 19, 21, 22, 23
---	----------------------------

RULES

Rule 4-1.15	12, 15
Rule 4-8.1	15, 16
Rule 4-8.4	12, 15

STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

PROCEDURAL HISTORY

October 26, 2015	Information
December 1, 2015	Respondent's Answer to Information
December 3, 2015	Appointment of Disciplinary Hearing Panel
February 4, 2016	DHP Hearing
March 9, 2016	DHP Decision
March 11, 2016	Acceptance of DHP decision by Informant
April 6, 2016	Rejection of DHP decision by Respondent
May 10, 2016	Record Submitted

BACKGROUND AND DISCIPLINARY HISTORY

Respondent Sean Bryant was admitted to The Missouri Bar on December 2, 2011.

App. 4, 22. ¹ Respondent's license is in good standing.

¹ The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the trial in this matter conducted on February 4, 2016. Citations to the trial testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example "**App. ____ (Tr. ____)**". Citations to the Information, Respondent's Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

Respondent has not been previously disciplined. Respondent, however, previously overdrafted his trust account and was the subject of an audit by the Office of Chief Disciplinary Counsel (OCDC). The OCDC ultimately closed the investigative file with a caution and recommended that Respondent attend a CLE on the proper use of the trust account. **App. 42-43 (Tr. 12-13).** Respondent failed to attend a trust account CLE. **App. 43 (Tr. 13).**

WILLIAMS REPRESENTATION AND TRUST ACCOUNT OVERDRAFT

On May 27, 2015, Ronetta Johnson contacted Respondent from Austin, Texas to inquire about representation of her husband, William Williams, who was incarcerated in the St. Louis County Justice Center on a probation violation arising from child support arrearages. **App. 112.** Respondent agreed to Represent Williams and entered his appearance on May 28, 2015. **App. 112.** Respondent notified Johnson that Williams' bond was set at \$6,000 cash only. **App. 112.**

In early June 2015, Johnson arrived in St. Louis for the purpose of bonding Williams out of jail. **App. 112.** She attempted to pay the \$6,000 bond by credit card, but was told by jail officials that she would need to pay cash. **App. 112.** Johnson was able to withdraw the \$6,000 in cash against the credit card, but was told by jail officials that they would only accept a cashier's check or money order. **App. 113.** Because Johnson did not have the extra money to convert her cash into a cashier's check or money order, she delivered the \$6,000 cash to Respondent on June 9, 2015 so that he could make a

payment to the Family Support Payment Center and obtain his client Williams' release from jail. **App. 113.**²

Respondent failed to deposit the \$6,000 cash into his client trust account. Instead, he placed the cash into a bank bag locked in his office file cabinet. On or about June 9, 2015, Respondent wrote a \$6,000 check drawn on his client trust account payable to the Family Support Payment Center (FSPC) in payment of his client Williams' child support arrearages. **App. 135-136.** That check, drawn on Commerce Bank, was returned due to insufficient funds in Respondent's client trust account after being presented for payment on June 16 and June 19, 2015. **App. 85-87.** On June 23, 2015, Commerce Bank sent the OCDC an overdraft notification regarding the FSPC check. **App. 40-41 (Tr. 10-11); 85-87.**

Kelly Dillon, a certified fraud examiner and paralegal employed at the OCDC for fifteen years, initiated an investigation of Respondent's client trust account and sent Respondent an initial request for information on June 29, 2015. **App. 88-92.** After Respondent failed to respond, Dillon sent a follow-up request on July 14, 2015. **App. 93.**

By letter to Investigator Dillon dated July 31, 2015, Respondent sought to explain

² The prosecutor agreed to apply the \$6,000 cash bond payment to Williams' child support arrearages and to release Williams from jail on probation. A condition of the probation was that Williams would not have to return to St. Louis for a court date unless he missed a payment on the remaining child support arrearages. **App. 112-113.**

the reason that the \$6,000 check written out of his trust account to the FSPC on behalf of his client Williams bounced. **App. 45-47 (Tr. 15-17); 94-108.** He stated the following:

- Respondent stated that due to issues in his personal life, he checked himself into a residential drug and alcohol recovery program in Hannibal, Missouri from June 15 through July 5, 2015. **App. 95.**
- Respondent intended to deposit the \$6,000 cash into his trust account. He failed to do so prior to checking himself into the residential recovery program. **App. 95.**
- Upon his release from the residential recovery program, Respondent stated that he asked his brother, Dr. Joshua Hill, who picked him up from the program, to take the \$6,000 cash given him for Williams' bond, obtain a cashier's check, and pay the FSPC. Respondent further stated that his brother did as Respondent had asked. **App. 111-112.**

. Respondent's explanation of events caused concern on the part of Investigator Dillon. As a result, Dillon sent a second request for information from Respondent. **App. 48 (Tr. 18); 109-110.** By letter dated August 21, 2015, Respondent reiterated his explanation of events and provided the following additional information:

- After being given the \$6,000 cash, he kept the money in a bank bag in his law office file cabinet. **App. 112-113.**
- The purpose of Respondent's 21-day residential treatment admission was "to obtain help in not drinking alcohol to excess." **App. 112-113.**

As a result of her investigation, including a detailed audit of Respondent's trust account and conversation with Respondent's brother, Dr. Hill, Investigator Dillon determined that much of the information provided by Respondent to the OCDC in his July 31 and August 21 letters was false. **App. 52-54 (Tr. 22-24).** Thus, the OCDC's investigation revealed the following additional information:

- Respondent was unable to go to a bank to convert the \$6,000 cash to a cashier's check or deposit it in his trust account because he had no car. He had wrecked his car in May 2015, had no insurance or money to cover the damage and had been using public bus transportation. **App. 55 (Tr. 25).**
- In addition to an alcohol addiction, Respondent had an addiction to prescription drugs. **App. 54 (Tr. 24).**
- When Respondent's brother, Dr. Hill, picked up Respondent from the treatment facility, there was only \$3,500 dollars of the original \$6,000 cash remaining from the money given to Respondent by Ronetta Johnson. **App. 57 (Tr. 27).** Respondent had misappropriated \$2,500 of the money and used it to purchase drugs. **App. 67 (Tr. 37).**
- Respondent's brother, Dr. Hill, contributed \$2,525 of his own money to make up for the cash stolen by Respondent from his client Williams. He then purchased a cashier's check on August 26, 2015 in the amount of \$6,025 in order to pay the

agreed upon amount to the FSPC on behalf of his client. **App. 56-58 (Tr. 26-28); 132-136.**³

In addition to the above, Dr. Hill indicated that Respondent had been struggling with addiction and had had some suicidal tendencies. **App. 57-58 (Tr. 27-28).**

RESPONDENT'S DHP TESTIMONY

At the hearing before the Disciplinary Hearing Panel on February 4, 2016, Respondent testified that he moved to Columbia, Missouri in September 2015 to live with his brother, Dr. Hill, and that he comes to St. Louis as necessary to work on the fifteen to twenty traffic cases that he still has pending. **App. 64-66 (Tr. 34-36).** Respondent stated that he no longer uses the prescription medication Adderall that he was abusing and no longer smokes marijuana. **App. 64-66 (Tr. 34-36).** However, he does occasionally have a glass of wine because “this is a hard business...this is a hard life.” **App. 67 (Tr. 37).** Respondent acknowledged that he had been drinking heavily in the past. **App. 65 (Tr. 35).** Respondent attends meetings of Narcotics Anonymous and has a sponsor who he sees daily. **App. 67 (Tr. 37).** The sponsor is unaware that Respondent has an occasional glass of wine and would not like it if he knew. **App. 67 (Tr. 37).**

Respondent stated that he has no recollection as to how much money he took from his client, but did acknowledge that he was not honest with the OCDC investigator, Kelly

³ The FSPC assessed a \$25 charge due to the fact that the original \$6,000 check paid by Respondent to the FSPC had bounced.

Dillon. **App. 65 (Tr. 35).** Respondent expressed remorse for his actions. **App. 65 (Tr. 35).**

DISCIPLINARY HEARING PANEL DECISION

The Disciplinary Hearing Panel issued its decision on March 9, 2016. **App. 138-145.** The Panel found that the allegations of the Information were admitted and uncontroverted and that the testimony of Informant's investigator, Kelly Dillon, was credible and worthy of belief. **App. 140.**

Based on the record evidence as set forth above, the Panel found that Respondent violated the following Rules of Professional Conduct:

- Rule 4-1.15(a) by failing to hold the property of a client separate from his own property;
- Rule 4-1.15(f) by failing to maintain complete records of Respondent's trust account;
- Rule 4-1.15(d) by failing to promptly deliver funds in his possession to the client or to the appropriate third parties;
- Rule 4-8.4(c) by misappropriating client funds and by engaging in conduct involving dishonesty and fraud; and
- Rule 4-8.1(a) by knowingly making a false statement of material fact to the disciplinary authority.

The Panel found that Respondent violated ethical duties owed to Respondent's clients and the legal profession as a whole. **App. 142.** The Panel found that Respondent acted intentionally. **App. 143.** The Panel found that Respondent's client suffered actual

injury as a result of his professional misconduct. **App. 143.** Finally, the Panel found that ABA Standards 4.11, 4.41(b), and 6.1 were applicable and required disbarment.

In aggravation, the Panel found a dishonest and selfish motive [ABA Standard 9.22(b)]; bad faith obstruction of the disciplinary proceeding by intentional failure to comply with orders of the disciplinary agency [ABA Standard 9.22(c)]; and multiple offenses [ABA Standard 9.22(d)]. In mitigation, the Panel found that Respondent was remorseful [ABA Standard 9.32(l)]. **App. 144-145.**

Based on the above referenced findings and conclusions, the Panel recommended that the Respondent be disbarred. **App. 145.** The Informant accepted the Panel's recommendation on March 11, 2016. **App. 149.** The Respondent rejected the Panel's recommendation on April 6, 2016. **App. 150.**

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

A. HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY FAILING TO SAFEKEEP FUNDS ENTRUSTED TO HIM BY HIS CLIENT WILLIAMS AND BY MISAPPROPRIATING SUCH FUNDS TO SUPPORT A DRUG AND ALCOHOL ADDICTION; AND

B. HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY LYING TO THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT.

In re Oliver, 285 S.W.2d 648 (Mo. banc 1956)

Rule 4-1.15, Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

POINT RELIED ON

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE:

A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT AND MISREPRESENTATION; HE FAILED TO SAFEKEEP HIS CLIENT'S PROPERTY; AND HE LIED TO THE OFFICE OF DISCIPLINARY COUNSEL IN THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT;

B. THIS COURT'S DECISIONS, THE ABA SANCTION STANDARDS AND THE PRESENCE OF SIGNIFICANT AGGRAVATING CIRCUMSTANCES SUPPORT DISBARMENT; AND

D. THE DISCIPLINARY HEARING PANEL RECOMMENDED DISBARMENT.

In re Farris, 472 S.W.3d 549 (Mo banc 2015)

In re Mendell, 693 S.W.2d 76 (Mo. banc 1985)

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE:

A. HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY FAILING TO SAFEKEEP FUNDS ENTRUSTED TO HIM BY HIS CLIENT WILLIAMS AND BY MISAPPROPRIATING SUCH FUNDS TO SUPPORT A DRUG AND ALCOHOL ADDICTION; AND

B. HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY LYING TO THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT.

A lawyer owes his client the utmost in good-faith and the highest loyalty and devotion to his client's interests. "The relation between attorney and client is highly fiduciary and of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith" on the part of the attorney. *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956). The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when a lawyer engages in deceitful conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. See Introduction, Rule 5.0, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

The record evidence in this case is undisputed by Respondent and overwhelmingly supports a finding that he breached his duty of good faith and fidelity to his client William Williams.

Rule 4-1.15 Violations. The evidence establishes and the Panel found that Respondent violated the following provisions of Rule 4-1.15 in his handling of the \$6,000 cash entrusted to him by Ronetta Johnson on behalf of client Williams:

- Rule 4-1.15(a) in that Respondent failed to hold the \$6,000 cash separate from his own property;
- Rule 4-1.15(d) in that Respondent failed to promptly deliver the \$6,000 given him by Johnson on behalf of client Williams to the appropriate third party, the Family Support Payment Center. By failing to promptly deliver the funds to the FSPC, Respondent caused injury to his client Williams, who remained incarcerated in the St. Louis County Justice Center due to child support arrearages.
- Rule 4-1.15(f) in that Respondent failed to maintain complete and accurate records of his trust account activity.

Rule 4-8.4(c) Violation. The evidence establishes that Respondent stole \$2,500 of the cash entrusted to him by Johnson on behalf of client Williams and used the money to support his drug addiction. The Panel correctly found that Respondent thereby violated Rule 4-8.4(c) by engaging in conduct involving fraud, dishonesty and deceit.

Rule 4-8.1(a) Violation. During the course of the Informant's investigation of the trust account overdraft, Respondent falsely stated to the Informant's investigator that he had kept the \$6,000 cash in a bank bag in his law office file cabinet until he was

discharged from the residential drug and alcohol recovery program, at which time he gave the \$6,000 cash to his brother in order to obtain a cashier's check and pay the FSPC. In truth, Respondent stole \$2,500 of the money entrusted to him in order to support his drug and alcohol addiction. The Panel correctly found that Respondent violated Rule 4-8.1(a) by failing to cooperate in the disciplinary authority's investigation of his misconduct by knowingly making a false statement of fact to the Informant.

ARGUMENT

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE:

A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT AND MISREPRESENTATION; HE FAILED TO SAFEKEEP HIS CLIENT’S PROPERTY; AND HE LIED TO THE OFFICE OF DISCIPLINARY COUNSEL IN THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT;

B. THIS COURT’S DECISIONS, THE ABA SANCTION STANDARDS AND THE PRESENCE OF SIGNIFICANT AGGRAVATING CIRCUMSTANCES SUPPORT DISBARMENT; AND

D. THE DISCIPLINARY HEARING PANEL RECOMMENDED DISBARMENT.

In determining the appropriate sanction for attorney misconduct, this Court historically relies on several sources. First and foremost, the Court applies its own standards to maintain consistency, fairness and ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. Those standards are written into law when the Court issues opinions in attorney discipline cases.

In re Kazanas, 96 S.W.3d 803, 806 (Mo. banc 2003).

The Court also relies on the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.). Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline discipline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

The Court also considers as advisory the recommendation of the Disciplinary Hearing Panel that heard the case. In this instance, the Panel recommended disbarment. **App. 155.**

The prior opinions of this Court in attorney discipline cases support disbarment in this case. Absent significant mitigating circumstances that are not present in this case, the Court has generally disbarred attorneys who intentionally misappropriate client or third party funds. Thus, in 1985, the Court disbarred an attorney for taking \$500 off the top of an \$8,000 settlement he had reached for a client. *In re Mendell*, 693 S.W.2d 76 (Mo. banc 1985). See also: *In re Mentrup*, 665 S.W.2d 324 (Mo. banc 1984); *In re Maier*, 664 S.W.2d 1 (Mo. banc 1984); *In re Witte*, 615 S.W.2d 421 (Mo. banc 1981).

More recently, the Court disbarred an attorney who stole, not from his clients but from his law partners. Noting that mitigating factors were present, the Court nevertheless found that "certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence in it. Some acts ... may indicate such a lack of respect for the law ... that disbarment may be warranted." *In*

re Kazanas, 96 S.W.3d 803, 809 (Mo. banc 2003), citing *In re Frick*, 694 S.W.2d 473, 480 (Mo. banc 1985).

The Court extensively addressed the issue of misappropriation and conversion of client funds by a lawyer in the case of *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008). In that case, Belz committed professional misconduct when he “borrowed” client funds from their trust accounts. While the Court noted that disbarment is the usual result in misappropriation cases because of the egregious nature of the misconduct, it also held that mitigating and aggravating factors are always considered in determining the appropriate sanction. *Id.* at 39. The Court found the presence of compelling mitigating circumstances, including the fact that (a) Belz suffered from bipolar disorder that was causally connected to the misappropriations, (b) he self-reported his professional misconduct, (c) he made timely and voluntary restitution, and (d) he had no prior disciplinary history. Based on this “unusual array of mitigating circumstances”, the Court suspended Belz for three years. *Id.* at 47.

The case at bar is factually distinguishable from *Belz*. While Respondent admittedly suffers from the disease of alcoholism and drug addiction that may have contributed to the theft of client funds, it should not be considered in mitigation because the facts do not meet the standards for mitigation under the ABA Standards. Specifically, there is an absence of record evidence to support a finding that Respondent has recovered from the disease as indicated by a “meaningful and sustained period of successful rehabilitation.” ABA Standard 9.32(i)(3). As the Disciplinary Hearing Panel correctly noted:

The panel further notes that ABA Standard, Section 9.32 considers mitigating factors. One possible factor to be considered applicable here: 9.32(i), mental disability or chemical dependency including alcoholism or drug addiction. It's clear some of the problems were the result of Respondent's alcoholism and addiction problems. As there is no indication Respondent has a meaningful and sustained period of successful rehabilitation, this would not be considered a mitigating factor. **App. 145.**

In addition, unlike the *Belz* case, Respondent did not self-report his misconduct to the OCDC. To the contrary, he failed to communicate with both his own client regarding the delay in paying the \$6,000 entrusted to him to the FSPC and lied to the OCDC regarding his theft of funds. Thus, the significant and unique mitigating circumstances existing in the *Belz* case are not present in this case.

Most recently, this Court disbarred an attorney for misappropriating nearly \$93,000 that belonged to his clients and their medical creditors. *In re Farris*, 472 S.W.3d 549 (Mo. banc 2015). While stating that disbarment is not automatic in such cases, the Court also noted that it has historically refused to tolerate the misappropriation of a client's money. In ordering Farris' disbarment, the Court stated: "Nothing has changed to warrant a retreat from the firm stance taken in these cases. Attorneys today must hold just as much (or more) money in trust for their clients and others as in the past. This Court's rules requiring attorneys to safeguard such property are as stringent now as ever before. And, most importantly, this Court's obligation to protect the public and the profession from attorneys who violate this trust is as important today as ever. There

simply is no room in this profession for attorneys who take property held in trust for others and use it as their own.” *Id.* at 562.

Under this Court’s prior opinions, disbarment is the appropriate discipline for Respondent’s professional misconduct.

The ABA Standards support disbarment in this case. In assessing an appropriate sanction for professional misconduct, this Court routinely relies on sanction guidelines developed by the ABA’s Center for Professional Responsibility. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). The guidelines, known as the ABA Standards for Imposing Lawyer Sanctions (1991 ed), consider the following primary questions:

- (1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)
- (2) What was the lawyer’s mental state? (Did the lawyer act intentionally, knowingly, or negligently?)
- (3) What was the extent of the actual or potential injury caused by the lawyer’s misconduct? (Was there a serious or potentially serious injury?) and
- (4) Are there any aggravating or mitigating circumstances?

ABA Standards: Theoretical Framework, p. 5.

Ethical Duty Violated. The ABA Standards “assume that the most important ethical duties are those obligations which a lawyer owes to clients.” Application of the ABA Standards requires the user to initially analyze the first three questions and then, only after a baseline sanction is apparent, to consider aggravating and mitigating circumstances. ABA Standards, Preface: Methodology, p. 3. The drafters intentionally

rejected an approach, however, that focused only on a lawyer's intent. Instead, they recognized that sanctioning courts must consider not only the attorney's intent and damage to her clients, but also the damage to the "public, the legal system and the profession." ABA Standards, Preface: Methodology, p. 3.

Having considered this background, the application of these ABA Standards to the case at bar must start with Standard 4.11: **Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.** ABA Standard 4.11. That standard must be the starting point because mitigating and aggravating circumstances are only considered after a baseline standard is determined. And, that standard must be the baseline because the admitted and uncontroverted evidence is that Respondent made conscious choices and took specific action to convert and misappropriate \$2,500 of the \$6,000 entrusted to him by Ronetta Johnson on behalf of client Williams to his own use. In so doing, Respondent caused actual injury to his client within the meaning of ABA Standard 4.11.

Suspension, which is discussed as a baseline sanction in ABA Standard 4.12, is not applicable in this case because Respondent did not merely commingle his own money with client and third party funds; instead, he intentionally took and spent his client's money and used it in furtherance of his alcohol and drug addiction.

Mental State. The Panel correctly found that Respondent acted with intent in misappropriating the subject funds, stating:

The actions by Respondent here, when he misappropriated \$2,500 of the cash given by his client's wife and used the cash to purchase alcohol and drugs indicate a conscious objective or purpose to accomplish a particular result. **App. 142-143.**

Aggravating and Mitigating Circumstances. Under the ABA Standards, once a baseline is established, aggravating and mitigating circumstances are considered. The aggravating circumstances found to be present by the Disciplinary Hearing Panel included:

9.22(b) Dishonest or Selfish Motive

Respondent admitted that he misappropriated \$2,500 of the cash entrusted to him in order to fund his alcohol and drug addiction.

9.22(d) Multiple Offenses

The Disciplinary Hearing Panel found and the record evidence supports a finding that Respondent violated multiple rules in his handling of the \$6,000 entrusted to him by his Ronetta Johnson on behalf of the Respondent's client.

9.22(f) Submission of False Statement during the Disciplinary Process

Respondent knowingly made false statements of material fact to the Informant's investigator during the course of the investigation of Respondent's misconduct.

The Disciplinary Hearing Panel also found the presence of the following mitigating circumstance:

9.32(l) Remorse

Respondent testified that he is remorseful for the misconduct that led to the theft of money from his client. **App. 65 (Tr. 35).**

The Disciplinary Hearing Panel recommended that Respondent be disbarred. In an attorney discipline case, the disciplinary hearing panel's findings of fact, conclusions of law and recommendation are advisory in nature. This Court reviews the evidence *de novo*, independently determines the credibility, weight, and value of the testimony of the witnesses and draws its own conclusions of law. *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000); *In re Oberhellman*, 873 S.W.2d 851, 852 (Mo. banc 1994). Nevertheless, the Panel's decision in this case recommending that Respondent be disbarred is consistent with the preponderance of the record evidence and the controlling case law.

CONCLUSION

Respondent engaged in serious professional misconduct involving safekeeping property, deceit and misrepresentation in his handling of client and third party funds. The presence of aggravating factors, including (i) a dishonest motive, (ii) multiple offenses, and (iii) the submission of false statements to the disciplinary authority, require disbarment.

Respectfully submitted,

OFFICE OF CHIEF DISCIPLINARY
COUNSEL

ALAN D. PRATZEL
Chief Disciplinary Counsel



By: _____

Alan D. Pratzel, #29141
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400
Fax: (573) 635-2240
Email: Alan.Pratzel@courts.mo.gov

ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2016, the Informant's Brief was sent to Respondent's counsel via the Missouri Supreme Court e-filing system to:

Paul J. D'Agrosa
7710 Carondelet Avenue, Suite 201
Clayton, MO 63105
Attorney for Respondent



Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 4,535 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Alan D. Pratzel